IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.265 OF 2001

Dhondiba Baburao Argade
(since deceased by his heirs) & Ors ...Appellant

Vs.

Mahadu @ Damu Krishna Shivale
(since deceased by his heirs) & Ors. ...Respondent

Mrs.Anjali Helekar for the Appellants
Mr.Arjun M. Shirale i/b M/s.Thatte for the Respondents.

CORAM: A.S.OKA, J.
DATED: JANUARY 20, 2005.

P.C.:

1. The learned Counsel for the Appellants states that Civil Application Stamp No.30798 of 2002 has been filed for bringing on record the legal representatives of deceased Appellant No.1. The said application stands allowed as it is filed within limitation. Amendment to be carried out within three weeks.

2. The unsuccessful Plaintiff has preferred this Second Appeal. The suit was filed for specific performance of the agreement of sale executed in the year 1974. The suit has been dismissed and the Appeal preferred by the Appellant has also been dismissed.

3. The learned Counsel for the Appellants submitted that the finding recorded by the Courts below that the suit was barred by limitation is obviously erroneous as no specific time was fixed by the agreement for performance of the same. The

learned Counsel for the Appellant further submitted that the Appellate Court has not framed proper points for determination as per Order XLI Rule 31 of the Code of Civil Procedure, 1908.

4. The agreement is of the year 1974 and the suit for specific performance was filed in the year 1993. Whether the suit was within limitation or not is altogether a different question. However, the Courts below are justified in refusing discretionary relief of specific performance only on the ground of gross delay and latches in filing the suit. Grant of relief of specific performance is discretionary. When the suit is filed after 19 years from the date of execution of the suit agreement, no fault can be found with the finding of the Trial Court while exercising the discretionary power.

5. So far as failure to frame points for determination is concerned, I find that the Appellate Court has dealt with all submissions made by the Appellant and the Appellate Court has recorded the reasons. There is no consequent failure of justice as a result of non-framing of points for determination.

6. No substantial question of law arises. Appeal is dismissed with no order as to costs.

Judge.